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May 3, 1993

Donna R. Searcy, Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 92-259

Dear Ms. Searcy:

Enclosed for filing is an original and nine copies of the Petition for Reconsideration and/or Clarification of Tribune Broadcasting Company.

Please date-stamp one copy and return it to the messenger. Thank you.

Sincerely,

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection and	)	MM Docket No. 92-259

Under the Cable Act, "all [commercial] television stations . . . have retransmission consent rights." Order at 84, ¶ 148. The Act contains a limited number of exceptions to the retransmission consent requirement, one of which permits retransmission without consent "by a cable operator or other multi-channel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991." 47 U.S.C. § 325(b)(2)(D). This superstation exception, as the Commission recognized in its Notice of Proposed Rulemaking in this proceeding, is one of several exceptions to retransmission consent for "certain out-of-market retransmissions of television signals if the signal is delivered via satellite."[4]

The Rule as adopted, however, essentially tracks the statutory language, which is unclear as to whether the exception is limited to out-of-market retransmissions of a superstation's signal. The Rule might be interpreted by a local cable operator as permitting it to retransmit a local station's signal without

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[3] (...continued)
York, New York; KTLA(TV), Los Angeles, California; and KWGN-TV, Denver, Colorado.

[4] In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-259, Notice of Proposed Rulemaking, 7 FCC Rcd. 8055, 8066 ¶ 47 (1992) (emphasis added). The Commission went on to note that "out-of-market retransmission of television signals that are delivered to a cable system or other multichannel distributor by other means, such as microwave, or whose satellite carriage began after May 1, 1991, are not exempt from retransmission consent requirements." Id.

consent if the cable operator receives the signal via satellite, even though the cable operator previously had been receiving the signal over the air and would have had to obtain the station's consent to retransmit the over-the-air signal. Such a broad interpretation of the superstation exception would effectively nullify the ability of a superstation to elect retransmission consent (or must-carry status) within its home market. Faced with such an election, a local cable system could refuse to negotiate with the station, knowing that it could obtain the station's signal via satellite without the station's consent.

Tribune urges the Commission to reconsider and/or clarify its Rule to make clear that such an attempt to evade a broadcasting station's retransmission rights within its ADI is impermissible. A television station broadcasting programming over the air in its local market should not be treated as a "superstation" within the meaning of the Act with respect to cable systems in that market, even though that station is a superstation as to distant cable systems, where the station's signal cannot be received over the air but is available only via satellite. Nor can it fairly be said that the signal of the station "was obtained from a satellite carrier" when the only reason the cable operator received the signal via satellite was to evade the retransmission consent requirement. The Commission should affirm that such bald manipulation of the statutory scheme enacted by Congress is not permitted.

Interpreting the superstation exception to retransmission consent in this manner is necessary to preserve the essential structure of the Cable Act, which provides television stations within their local markets the ability to elect between must-carry status and retransmission consent. As the legislative history of the Cable Act demonstrates, Congress intended that all commercial television stations have this choice within their local markets, regardless of whether their signal is retransmitted via satellite to distant markets. Indeed, any other reading of the Act would render the statutorily-required election between retransmission consent and must-carry, see 47 U.S.C. § 325(3)(A), meaningless: if a station has only one or the other of the rights (or neither because the signal is exempt), there is no election to be made.

For example, during the floor debates on the Act, Representative Hall described the fundamental structure of the must-carry and retransmission consent provisions of the Act as follows:

> "The legislation gives broadcast stations a choice of two options when dealing with a local cable operator. The station can either elect to operate under must carry, in which case the station is automatically carried on the cable system for a 3-year period without compensation, or the broadcast station can choose retransmission consent, and enter into negotiations with the cable system."

138 Cong. Rec. H8682 (Sept. 17, 1992) (remarks of Rep. Hall). The Senate Report on S.12, which eventually became the Cable Act, is even more plain:

> S.12 provides that each television station which has carriage and channel positioning rights under section 614 and 615 will make an election between those rights and the right to grant retransmission authority for each local cable system before the amendments to section 325 become effective, and every three years thereafter."

S. Rep. No. 92, 102nd Cong., 1st Sess. 38 (1991).[5] In their local market, superstations, like other local commercial television stations,[6] have the right to insist that cable operators carry their signal, and so necessarily also have the right to require retransmission consent.

This interpretation of the superstation exception, as applying only to out-of-market retransmissions, also is fully consistent with the purposes behind retransmission consent and the superstation exception to retransmission consent. Congress required retransmission consent to promote local broadcasting. Without retransmission consent, cable operators were getting a free ride on the investment of television stations in local programming, which jeopardized the continued provision of such

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[5] See also, e.g., id. at 63 ("every broadcaster will have to elect whether it wants to avail itself of must-carry or assert its retransmission rights" (emphasis added)); 138 Cong. Rec. S413 (Jan. 27, 1992) (remarks of Sen. Danforth) ("S. 12 creates a system under which broadcast stations may either elect carriage under the must-carry provisions or may opt to negotiate with cable operators for retransmission of their signals"); id. S14224 (Sept. 21, 1992) (remarks of Sen. Inouye) ("When a local station forgoes the option for must carry protection, it may utilize its retransmission rights to negotiate with the local cable company over the terms and conditions of its carriage on the system"); id. S562 (Jan. 29, 1992) (remarks of Sen. Inouye) (same).

[6] See 47 U.S.C. § 614(h)(1) (definition of "local commercial television station").

programming.[7] The purpose of the superstation exception to retransmission consent was to leave undisturbed the national viewing patterns of superstations, so that cable operators in distant markets could retransmit superstations' signals without having to obtain their consent. S. Rep. No. 92, supra, at 37 (superstation exception "will avoid any disruption of the settled arrangements for carriage of distant signals" (emphasis added)).

Construing the superstation exception as limited to out-of-market retransmissions furthers the purpose behind retransmission consent without undercutting the purpose behind the superstation exception in any respect. Accordingly, Tribune respectfully requests that the Commission reconsider and/or clarify its Order in this proceeding and determine that the superstation exception to retransmission consent, 47 C.F.R.

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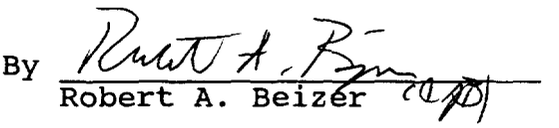
[7] See, e.g., Cable Act, § 2(19) ("Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters"); S. Rep. No. 92, supra, at 35 ("The Committee has concluded that the exception to section 325 for cable retransmission has created a distortion in the video marketplace which threatens the future of over-the-air broadcasting"); 138 Cong. Rec. H8677 (Sept. 17, 1992) (remarks of Rep. Fields) ("retransmission consent is a marketplace, procompetitive approach to the competitive imbalances which exist today between the local broadcaster and the local cable operator. If we fail to address the issue, then we may very well see the demise of the . . . local broadcaster"); id. S14222 (Sept. 21, 1992) (remarks of Sen. Inouye) ("There is simply no reason to artificially subsidize the cable industry off the backs of the broadcasters anymore"); id. H6554 (July 23, 1992) (Rep. McMillen) (retransmission consent "will go a long way toward helping maintain the viability of local broadcasters").

§ 76.64(b)(2), applies only to out-of-market retransmissions of the signals of superstations via satellite.

Respectfully submitted,

TRIBUNE BROADCASTING COMPANY

By 
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May 3, 1993